IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6292 OF 2006

1. Pleasure Resorts Pvt. Ltd. & Anr. .....Petitioners.

V/s

1. The State of Maharashtra & Ors. ..... Respondents.

Shri Y.S. Jahagirdar with Shri Madhav J. Jamdar for the petitioners.

Shri C.R. Sonawane, AGP for the respondents - State.

Shri R.S. Khadapkar i/b Shri R.G. Ketkar for the respondent No.5.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 20th September, 2006

P.C.:

1. Heard.

2. The land acquisition proceedings initiated by the respondents in respect of Plot No.70/17, C.T.S. No. 2107/3, admeasuring about 16,992 sq. meters situated at Yerawada, Pune are sought to be challenged on two grounds. Firstly,

that there was no decision by the Planning Authority to acquire the land and the decision in that regard has been taken only by the Standing Committee of the Corporation. Secondly, there is no notification issued appointing the Land Acquisition Officer for the purpose of acquisition of the land which was otherwise required in terms of section 3(eee) of the Land Acquisition Act, 1894 in relation to the acquisition proceedings in question and that the Land Acquisition Officer has no authority to proceed with the proceedings regarding land acquisition.

3. At the outset, it is to be noted that the petitioners had earlier filed two Writ Petitions viz. Writ Petition No. 5631 of 2002 and Writ Petition No. 5332 of 2003 and they were disposed of by the Orders dated 23/10/2002 and 28/09/2004 respectively. In neither of these Petitions the points which are sought to be raised challenging the acquisition proceedings were raised, though, both the petitions were in relation to the acquisition proceedings pertaining to the plot in question. Both the petitions were dismissed.

4. Merely because in earlier Petitions the petitioners had not raised the points which are now sought to be raised in the present Petitions even though earlier two Petitions were pertaining to the challenge to the land acquisition proceedings in regard to the plot in question, applying the principle of constructive *res judicata,* Petition is liable to be rejected in *limine.* The law on this point is well settled by the decisions of the Apex Court in ***Forward Construction Co. and others vs. Prabhat Mandal (Regd.), Andheri and others***[1]***, Gulabchand Chhotalal Parikh vs. State of Gujarat***[2] ***and The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others***[3] Even otherwise, there is no substance in the challenge on the ground on which the acquisition proceedings are sought to be challenged.

5. It is to be noted that the challenge is sought to be thrown to the acquisition proceedings solely on the basis of the letter dated 01/07/2006, issued by the Pune Corporation to the petitioners' advocate. The said letter was in reply to the notice which was served upon the Planning Authority

1. AIR 1986 SC 391
2. AIR 1965 SC 1153
3. AIR 1990 SC 1607.

under section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as “the MRTP Act”). In the said letter, it was informed to the petitioners’ advocate that in view of decision of the Standing Committee of acquisition of land, the question of entertaining the request by the petitioners under section 127 does not arise. It is not in dispute that the land acquisition proceedings in relation to the land in question had commenced in the year 2001 i.e much prior to issuance of the notice under section 127 to the Planning Authority. Once the land acquisition proceedings were already initiated in terms of section 126 of the MRTP Act, the question of entertaining notice under section 127 of the MRTP Act does not arise. In fact, there was no occasion for the petitioners to issue such notice as the land acquisition proceedings were already initiated in relation to the plot in question. Being so, merely because in reply to the notice under section 127 it has been informed to the petitioners about a decision of the Standing Committee, that itself will not lead to a conclusion about absence of decision for acquisition of land by the appropriate authority. The intimation to the petitioners under the said letter of

01/07/2006 was not at all required and it was suffice to inform about rejection of their application in view of already pending proceedings for acquisition of the plot in question.

6. As regards the contention that there is no decision of the Planning Authority to acquire the land in terms of section 127, it is to be noted that the acquisition proceedings are initiated in terms of section 126 of the MRTP Act. The communication being in relation to the notice under section 127 of the MRTP Act, that itself will not refer to proceedings which are under section 126 of the MRTP Act. It is nowhere disclosed in the letter dated 01/07/2006 that the proceedings for acquisition which were initiated under section 126 were pursuant to the decision of the Standing Committee alone and without any decision by the Planning Authority. Apparently, the contention which is sought to be raised is totally devoid of any substance.

7. Undisputedly, the land acquisition proceedings under section 126 are to be initiated pursuant to the decision of the Government on an application by the appropriate authority

disclosing the need for acquisition of the land. It is not the case of the petitioners that the Government had failed to take into consideration that there was no proper requisition by the competent authority to acquire the land. It is also undisputed fact that the petitioners did not raise any objection in proceedings under section 5-A about the absence of proper recommendation by the competent authority for acquisition of the land. The acquisition proceedings are pending more than six years. Two attempts by the petitioners to get the proceedings quashed have failed. Even SLP against the order passed by this Court has been

rejected. Apparently, the petitioners are trying to stall the acquisition proceedings on one pretext or other without any justification . In such cases, the Petition not only deserves to be dismissed but deserves to be dismissed with costs.

8. As regards the contention about second ground of absence of notification in favour of the Land Acquisition

Officer in terms of section 3(eee), a bare perusal of section 127(3) discloses that acquisition proceedings once initiated pursuant to the decision of the Government, have to proceed under the guidance of the Collector. It is not in dispute that the Collector has not taken appropriate initiative in controlling the land acquisition proceedings. In the circumstances, merely because there is no notification issued appointing a particular officer as the Land Acquisition Officer in relation to the land in question, that would not defeat the land acquisition proceedings. Even if there is no such notification, nothing prevents the competent authority from rectifying the mistake by taking appropriate decision even at this stage.

9. In the result, there is no substance in the Petition. The Petition is, therefore, dismissed with costs.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)